

By: Lewis

S.B. No. 808

A BILL TO BE ENTITLED .

AN ACT

relating to the regulation and certification of landscape architects and landscape irrigators; amending Chapter 457, Acts of The 61st Legislature Regular Session, 1969, as amended (Article 249c, Vernon's Texas Civil Statutes); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 1, Chapter 457, Acts of the 61st Legislature Regular Session, 1969, as amended (Article 249c, Vernon's Texas Civil Statutes) is hereby amended to read as follows:

"Definitions. As used in this Act:

(a) "Landscape architect" means a person licensed to practice or teach landscape architecture in this state as provided herein.

(b) "Landscape architecture" means the performance of professional services such as consultation, investigation, research, preparation of general development and detailed design plans, studies, specifications, and responsible supervision in connection with the development of land areas where, and to the extent that, the principal purpose of such service is to arrange and modify the effects of natural scenery for aesthetic effect, considering the use to which the land is to be put. Such services concern the arrangement of natural forms, features, and plantings, including the ground and water forms, vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements but shall not include

any-services-or-functions-within-the-definition-of-the
practice-of-engineering,-public-surveying-or-architecture
as-defined-by-the-laws-of-this-state.

(c) "Board" means the Texas State Board of Landscape
Architects, as created and provided by the Act.

(d) "Person" means a natural person except where
otherwise specifically indicated.

(e) "Secretary" means the executive secretary of
the board as herein provided.

(f) "Landscape irrigation system" means any assembly
of component parts permanently installed with and for the
controlled distribution of water for the purpose of irriga-
ting any and all types of landscape vegetation, in any
location, or for the purpose of dust reduction or erosion
control.

(g) "Landscape irrigator" means a person, corporation,
partnership, or other legal entity duly licensed in this
state and under this Act, who has and shall maintain a
regular place of business, and who, by himself, or through
a person or persons in his employ, sells, designs, consults,
installs, maintains, alters, repairs, or services any
landscape irrigation system or yard sprinkler system
including connections in and to any private or public
potable water supply or water supply system.

Section 2. Section 2, Chapter 457, Acts of The 61st
Legislature Regular Session, 1969, as amended (Article 249c,
Vernon's Texas Civil Statutes) is hereby amended to read as follows:

1 "Exemptions. (a) The provisions of this Act do not
2 ~~apply-to-ne~~ affect laws relating to:

3 (1) A registered professional engineer, building
4 designer, land surveyor, nurseryman, and architect (except
5 landscape architect), respectively;

6 (2) Irrigation or yard sprinkler work done by a
7 property owner in a building or on premises owned or occu-
8 pied by him as his home;

9 (3) Irrigation or yard sprinkler work done by anyone
10 who is regularly employed as or acting as a maintenance man
11 incidental to and in consideration with the business in which
12 he is employed or engaged, and who does not engage in the
13 occupation of landscape irrigator or yard sprinkler contractor
14 or maintenance for the general public; construction, instal-
15 lation and maintenance work done upon the premises or
16 equipment of a railroad by an employee thereof who does not
17 engage in the occupation of landscape irrigator or yard
18 sprinkler construction or maintenance for the general public;
19 and landscape irrigation and yard sprinkler construction or
20 maintenance and operation of its service lines or mains
21 and the installation, alteration, adjustment, repair, removal
22 and renovation of all types of appurtenances, equipment and
23 appliances;

24 (4) Any temporary or portable watering devices such as
25 garden hose, hose sprinklers, soaker hoses and agricultural
26 irrigation;

27 (5) Any agricultural irrigation, portable or solid set;

1 (6) Irrigation or yard sprinkler work or any other
2 services authorized by this Act done by a licensed profes-
3 sional engineer as defined by the laws of this state.

4 ~~(b)--Every-agriculturist,-agronomist,-horticulturist,~~
5 ~~forester,-gardner,-contract-engineer,-garden-or-lawn-care-~~
6 ~~taker,-nurseryman,-grader-or-cultivator-of-land-and-any~~
7 ~~person-making-plans-for-property-owned-by-himself-is~~
8 ~~exempt-from-registration-under-the-provisions-of-this-Act,~~
9 ~~provided-however,-none-of-the-foregoing-shall-use-the-title~~
10 ~~or-term-"landscape-architect",-or-"landscape-irrigator",-~~
11 ~~in-any-sign,-card,-listing,-advertisement-or-represent~~
12 ~~himself-to-be-a-"landscape-architect",-or-a-"landscape~~
13 ~~irrigator",-without-complying-with-the-provisions-of-this-Act-~~

14 Section 3. Section 3, Chapter 457, Acts of The 61st
15 Legislature Regular Session, 1969, as amended (Article 249c,
16 Vernon's Texas Civil Statutes) is hereby amended to read as
17 follows:

18 "There is hereby created a Texas State Board of Land-
19 scape Architects, which board shall consist of six members,
20 each of whom shall be a citizen of the United States and
21 a resident of this state. Members of the board and their
22 successors shall be appointed by the Governor with the
23 advice and consent of the Senate; three members shall be
24 individuals who have been actively engaged in the practice
25 of landscape architecture for a period of not less than 10
26 years prior to the date of their appointment, and three
27 members shall be individuals who have been actively engaged

1 in the practice of landscape irrigation who shall have had
2 respectively at least a minimum of 10 years, eight years
3 and six years experience as landscape irrigators.

4 The membership fo the board, except the initial members,
5 shall consist of three landscape architects and three land-
6 scape irrigators licensed under the provisions of this Act.
7 The three present members of the board shall serve and hold
8 office pursuant to the terms of their respective appointment:
9 one member for two years; one member for four years; and,
10 one member for six years from the date of their appointment
11 or until their successors are duly appointed and qualified.
12 The Governor shall appoint three additional members to the
13 board, who shall be landscape irrigators, on August 31, 1973,
14 to serve the following terms: one member for two years;
15 one member for four years; and one member for six years
16 from the date of their appointment or until their succes-
17 sors are appointed and have qualified. Thereafter, at
18 the expiration of the term of each member first appointed,
19 his successor shall be appointed by the Governor of the state,
20 and he shall serve for a term of six years, or until his
21 successor is appointed and qualified. Before entering upon
22 the duties of his office, each member of the board shall
23 take and subscribe to the constitutional oath of office,
24 and the same shall be filed with the Secretary of State.
25 Upon the death, resignation, or removal of any member of
26 the board, the Governor shall appoint a successor for the
27 remainder of the term of such member who shall qualify in

1 the same manner as other members of the board. Any member
2 may be removed by the Governor for official misconduct,
3 gross inefficiency or moral unfitness.

4 Section 4. Section 4, Chapter 457, Acts of The 61st
5 Legislature Regular Session, 1969, as amended (Article 249c,
6 Vernon's Texas Civil Statutes) is hereby amended to read as
7 follows:

8 "Powers and duties of the board. (a) The board shall
9 promulgate procedural rules and regulations, consistent with
10 the provisions of this Act, to govern the conduct of its
11 business and proceedings, and setting standards governing
12 the connections to any public or private water supply by a
13 landscape irrigator. Notwithstanding any other provision
14 of this Act, the board shall not have any power or authority
15 to amend or enlarge upon any provision of this Act by rule
16 or regulation or by rule or regulation to change the mean-
17 ing in any manner whatsoever of any provision of this Act
18 or to promulgate any rule or regulation which is in any way
19 contrary to the underlying and fundamental purposes of this
20 Act or to make any rule or regulation which is unreasonable,
21 arbitrary, capricious, illegal, or unnecessary. At its
22 first meeting it shall select one of its members who shall
23 be a landscape architect as chairman of the board and he
24 shall serve as such chairman for such length of time not
25 exceeding his term as a member of the board, as the board
26 may subscribe. The chairman shall serve a term as prescribed
27 by the rules and regulations of the board and may be removed

1 for cause, his removal however, not to disqualify him
2 from continuing as a member of the board. Four members
3 of the board shall constitute a quorum for the transaction
4 of business. The board may adopt such reasonable rules
5 and regulations of the orderly conduct of its affairs as
6 it may deem necessary, and may from time to time amend such
7 rules and regulations.

8 (b) The first board appointed under the provisions
9 of this Act shall hold its first meeting within 30 days
10 after the members have been qualified. It shall hold at
11 least two regular meetings each year at such time and place
12 as the chairman may designate. It may hold special meetings
13 at such times and such places as a majority of the board
14 may deem necessary after giving reasonable notice thereof
15 to all members. The board is authorized to employ an execu-
16 tive secretary who shall have such duties and responsibi-
17 lities as the board may prescribe. The board is authorized
18 to employ such other persons as it may deem necessary
19 to administer the provisions of this Act. The salary of
20 the secretary and all other employees of the board shall
21 be fixed by the board and shall be paid out of the Texas
22 State Board of Landscape Architect's and Irrigator's Fund
23 as provided for in this Act. All salaries paid by the board
24 shall be reasonable, comparable in amounts to salary paid
25 by other departments of the state government to employees
26 engaged in similar capacities. All persons employed by
27 the board shall hold their positions at the pleasure of the

1 board. Each member of the board shall receive as compen-
2 sation for services performed in connection with his duties
3 as such member a sum equal to his expenses actually incurred;
4 ~~provided-however,-said-expenses-shall-not-exceed-the-sum~~
5 ~~of-\$75-per-day,~~ exclusive of travel expense. All payments
6 to board members or employees and all expenses of the ad-
7 ministration of this Act shall be paid out of the Texas
8 State Board of Landscape Architect's and Irrigator's Fund
9 provided for herein, and no part of the expense of administer-
10 ing this Act shall ever be charged against the general funds
11 of the State of Texas. The board shall arrange for such
12 suitable office space and equipment as it may deem necessary
13 and the rental for such office space and the cost of such
14 equipment shall be considered administration expenses,
15 provided however, that if space is available this agency
16 shall be housed in one of the state office buildings of the
17 State of Texas and such compensation as may be required by
18 the administration of said office building shall be considered
19 as a part of the administration expense of this Act. The
20 board shall, as of August 31st of each year, after the
21 passage of this Act make a written report to the Governor
22 accounting for all receipts and disbursements under this Act.

23 Section 5. Section 5, Chapter 457, Acts of The 61st
24 Legislature Regular Session, 1969, as amended (Article 249c,
25 Vernon's Texas Civil Statutes) is hereby amended to read as
26 follows:

27 "Qualifications for registration. (a) From and

1 after the effective date of this Act, no person shall
2 represent himself or practice in any manner as a landscape
3 architect, as defined herein, unless such person shall be
4 licensed as provided herein. The following classes of
5 persons shall be qualified for registration and receive
6 a license:

7 (1) Any person over the age of ~~21~~ 18 years, not-
8 withstanding any other provisions of this Act, who submits
9 evidence to the board that prior to the passage of this Act,
10 that he ~~is-a-resident-of-Texas-and-a-citizen-of-the-United~~
11 ~~States,~~ possesses good moral character, and who has, for a
12 period of not less than three years, regularly represented
13 himself to be a landscape architect engaged in the practice
14 of landscape architecture, as defined in this Act, shall be
15 entitled to receive upon ~~taking~~ passing the required examin-
16 ation, hereinafter set out, a license to practice landscape
17 architecture as a landscape architect.

18 (2) Any person who is ~~a-resident-of-the-State-of~~
19 ~~Texas-and-a-citizen-of-the-United-States~~ over the age ~~21~~
20 18 years, possessing good moral character, and having or
21 holding a degree from a school whose study of landscape
22 architecture is approved by the board, or shall have had
23 not less than seven years actual experience in the office
24 of a licensed landscape architect, may apply for examination
25 and such application shall be accompanied by a fee ~~of-\$50~~
26 not to exceed \$100, as set by the board. The examination
27 ~~to-be-prepared~~ shall be ~~by-the-members-of-the-board-and~~

1 given by the board ~~at its office in Austin, Travis~~
2 ~~County, Texas,~~ at ~~or~~ such ~~other~~ place as the board may
3 determine or designate, provided however, that one-third
4 of the board shall be present at each examination held
5 and provided further that not more than three examinations
6 may be held during any calendar year. The scope of the
7 examination and the methods of procedure shall be prescribed
8 by the board with special reference to the applicant's
9 ability which will insure safety to the public welfare and
10 the property rights. A candidate failing an examination
11 may apply for reexamination at the expiration of six months,
12 ~~and shall be reexamined one time without payment of additional~~
13 ~~fee.~~

14 (b) No person shall engage in, work at, or conduct
15 the business of landscape irrigation, or yard sprinkler
16 construction or repairing in this state, and connect to
17 any private or public, raw or potable water supply system
18 unless such person is the holder of a valid certificate of
19 registration as provided for by this section. The board
20 shall issue certificates of registration to such persons
21 over the age of 18, of good moral character as have, by a
22 uniform, reasonable examination, shown themselves fit,
23 competent, and qualified to engage in the business, trade,
24 or calling of a landscape irrigator. ~~-An examination for~~
25 ~~landscape irrigators shall be given at the same time and~~
26 ~~place and in the same manner as an examination for landscape~~
27 ~~architects is given under Subsection (a) of this section,~~

1 ~~and the fee for such examination shall be \$50.~~ All persons
2 holding a certificate of registration as a landscape irri-
3 gator shall be qualified and shall not be required to meet
4 any further laws of this state or any other state regula-
5 tory agency for the performance of connecting to any private,
6 public, raw or potable water supply system.

7 (c) Any landscape architect licensed under this Act
8 shall not have to be licensed as a landscape irrigator in
9 order to perform the necessary services for design, construe-
10 ~~tion, repair and installation of any landscape irrigation~~
11 ~~system.~~

12 Section 6. Section 7, Chapter 457, Acts of The 61st
13 Legislature Regular Session, 1969, as amended (Article 249c,
14 Vernon's Texas Civil Statutes) is hereby amended to read as
15 follows:

16 "Certificates of registration. All certificates of
17 registration shall expire on the 31st day of August of each
18 year, following their issuance or renewal and shall be-
19 come invalid on that date unless renewed. It shall be the
20 duty of the secretary of the board to notify every person
21 registered under this Act of that date expiration of his
22 certificate and the amount of the fee that shall be required
23 for its renewal for one year; such notice shall be mailed
24 at least one month in advance of the date of the expiration
25 of said certificate. Renewal may be effected at any time
26 during the month of July or August of each year by payment
27 of the fee as prescribed and set by the board. The fee

1 for a landscape architect's certificate shall be not less-
2 ~~than-\$10-not-more-than-\$50~~ exceed \$100, as set by the Board.

3 The fee for a landscape irrigator's certificate shall be
4 not more than \$100. Failure on the part of any registrant
5 to renew his certificate annually, and by not later than
6 August 31st, as required above shall not deprive such person
7 of the right of renewal, but the fee to be paid for the re-
8 newal of a certificate after August 31st shall be increased
9 50 percent ~~10-percent-for-each-month-or-fraction-of-a-month-~~
10 that renewal payment is delayed; and provided further, that
11 if such failure to renew shall continue for more than one-
12 ~~year-~~ 60 days after the date of expiration of the registra-
13 tion certificate, the applicant must reapply for registra-
14 tion and must qualify under Section 5 of this Act. If fee
15 is not received 60 days after August 31, said license shall
16 be suspended and licensee shall have 30 days to request a
17 hearing before the board. After the hearing, the Board
18 shall review each suspension, and shall determine permanent
19 revocation.

20 Section 7. Section 7A, Chapter 457, Acts of The 61st
21 Legislature Regular Session, 1969, as amended (Article 249c,
22 Vernon's Texas Civil Statutes) is hereby amended to read as
23 follows:

24 "Expiration dates of certificates of registration;
25 proration of fee. The board by rule may adopt a system
26 under which certificates of registration expire on various
27 dates during the year. Renewals may be made at any time

1 during the two months prior to the expiration date, and
2 renewal fees paid after the expiration date shall be in-
3 creased ~~10-percent-for-each-month-or-fraction-of-a-month-~~
4 ~~that-renewal-payment-is-delayed~~ 50 percent that renewal
5 payment is delayed. For the year in which the expiration
6 date is changed, registration fees payable on August 31 shall
7 be prorated on a monthly basis so that each registrant
8 shall pay only that portion of the registration fee which
9 is allocable to the number of months during which the
10 registration is valid. On renewal of the registration on
11 the new expiration date, the total of the registration fee
12 is payable.

13 Section 8. Section 8, Chapter 457, Acts of The 61st
14 Legislature Regular Session, 1969, as amended (Article 249c,
15 Vernon's Texas Civil Statutes) is hereby amended to read as
16 follows:

17 "Revocation and reissuance of certificates. (a) The
18 board has the power to revoke the certificate of registra-
19 tion of any registrant who is charged with and found guilty
20 of:

- 21 (1) Violations of provisions of this Act;
22 (2) The practice of any fraud or deceit in obtaining
23 a certificate of registration;
24 (3) Any gross negligence, incompetency, or miscon-
25 duct in the practice of landscape architecture or irrigation;
26 (4) Holding himself out to the public or any member
27 thereof as an engineer or making use of the words "engineer,"

1 "engineered," "professional engineer," "P.E.," or any other
2 terms tending to create the impression that such registrant
3 is authorized to practice engineering or any other profes-
4 sion unless he is licensed under provisions of Texas
5 Engineering Practice Act or the other applicable licensing
6 law of this state.

7 (5) Holding himself out to the public or any member
8 thereof as a surveyor or making use of the words "surveyor,"
9 "surveyed," "registered public surveyor," "R.P.S.," or
10 any other terms tending to create the impression that such
11 registrant is authorized to practice surveying or any other
12 profession unless he is licensed under the provision of the
13 Registered Public Surveyors Act or the other applicable
14 licensing law of this state.

15 (b) In determining the truth of any such charges the
16 board shall proceed upon sworn information furnished it by
17 any reliable resident of this state; such information shall
18 be in writing and shall be duly verified by the person
19 familiar with the facts therein charged, and three copies
20 of the same shall be filed with the secretary of the board.
21 Upon receipt of such information the board, if it deems
22 the information sufficient to support further action on its
23 part, shall make an order setting the charges therein con-
24 tained for hearing at a specified time and place, and the
25 secretary of the board shall cause a copy of the board's
26 order and of the information contained in the written charges
27 to be served upon the accused at least 30 days before the

1 date appointed in the order for the hearing. The accused
2 may appear in person or by counsel or both, at the time
3 and place named in the order and make his defense to the
4 same. The board shall have the power, through its chair-
5 man or secretary, to administer oaths and compel the
6 attendance of witnesses before it as in civil cases in the
7 district court, by subpoena issued over the signature of
8 the secretary and the seal of the board.

9 Any person who may feel himself aggrieved by reason
10 of the revocation of his certificate of registration of
11 the board, as hereinabove authorized, shall have the right
12 to file suit within 30 days within receiving notice of the
13 board's order revoking his certificate of registration in
14 the district in the county of his residence of the county
15 in which the alleged events relied upon, and grounds for
16 revocation, took place, to annul or vacate the order of
17 the board revoking the certificates of registration; said
18 suit to be filed against the board as defendant, and
19 service of process may be had upon its chairman or secretary.
20 The only issues to be tried in such cause shall be whether
21 such person has been guilty as originally found by the
22 board, which issue shall be trial de novo, as that term
23 is commonly used in connection with an appeal from the
24 justice of the peace court to the county court, and
25 the substantial evidence rule shall not apply.

26 Section 9. Section 9, Chapter 457, Acts of The 61st
27 Legislature Regular Session, 1969, as amended (Article 249c,

1 Vernon's Texas Civil Statutes) is hereby amended to read as follows:

2 "Violations and penalties. After the effective date
3 of this Act any person who represents himself to be a land-
4 scape architect or irrigator in this state without being
5 registered or exempted in accordance with the provisions
6 of this Act, or any person presenting or attempting to use
7 as his own, the certificate of registration or the seal
8 of another, or any person who shall give any false or
9 forged evidence of any kind to the board or to any member
10 thereof in obtaining or assisting in attaining for another
11 a certificate of registration, or any person who shall
12 violate any of the provisions of this Act, shall be fined
13 not less than \$100 nor more than \$500, or be confined in
14 jail for a period not to exceed three months, or both.
15 Each day of such violation shall be a separate offense.

16 The attorney general or his assistants shall act as
17 legal advisor of the board and shall render such legal
18 assistance as may be necessary in enforcing and making
19 effective the provisions of this Act, provided that this
20 shall not relieve the local prosecuting officers of any
21 of their duties under the law as such.

22 Section 10. Section 10, Chapter 457, Acts of The 61st
23 Legislature Regular Session, 1969, as amended (Article 249c,
24 Vernon's Texas Civil Statutes) is hereby amended to read as
25 follows:

26 "Injunctions. After the effective dates of this
27 Act, any person practicing landscape architecture or

1 landscape irrigation who is not licensed by this board,
2 as set out in this Act, may be enjoined and restrained by
3 a District Court from practicing landscape architecture
4 or landscape irrigation upon petition of the board.

5 Section 11. Section 11, Chapter 457, Acts of The 61st
6 Legislature Regular Session, 1969, as amended (Article 249c,
7 Vernon's Texas Civil Statutes) is hereby amended to read as
8 follows:

9 "Fees. Every landscape architect shall pay an annual
10 fee as set by the board, ~~but in no event to be less than~~
11 ~~\$10 nor more than \$50,~~ not to exceed \$100, as provided in
12 Section 7 hereof. Every landscape irrigator shall pay
13 an annual fee as set by the board, but in no event shall
14 it be more than \$100. The fee shall be due and payable
15 on or before August 31 of each calendar year and shall
16 become delinquent on September 1 of each year.

17 All sums of money paid to the board under the pro-
18 visions of this Act, shall be deposited in the treasury
19 of the State of Texas, and placed in a special fund to
20 be known as the "Texas State Board of Landscape Architect's
21 and Irrigator's Fund." All expenditures for the administra-
22 tion and enforcement of this Act shall be in the amounts and
23 for the purposes fixed by the general appropriation bill.

24 Section 12. Section 12, Chapter 457, Acts of The 61st
25 Legislature Regular Session, 1969, as amended (Article 249c,
26 Vernon's Texas Civil Statutes) is hereby amended to read as
27 follows:

1 "Severability. If any article, section, subsection,
2 sentence, clause or phrase of this Act is for any purpose
3 or reason held to be unconstitutional, such invalid
4 portion shall not affect the validity of the remaining
5 portions of this Act. The Legislature hereby declares
6 that it would have passed the valid portions of the Act
7 irrespective of the fact that any one or more portions
8 thereof be declared unconstitutional.

9 Section 13. Section 13, Chapter 457, Acts of The 61st
10 Legislature Regular Session, 1969, as amended (Article 249c,
11 Vernon's Texas Civil Statutes) is hereby amended to read as
12 follows:

13 "Repeal of conflicting legislation with proviso.
14 All laws or parts of laws in conflict with the provisions
15 of this Act shall be, and the same are hereby repealed,
16 provided however, that this Act shall not be construed
17 as repealing or amending any laws affecting or regulating
18 any other profession.

AN ACT for the purpose of making clear that landscape irrigators need be certified and registered only by the Texas State Board of Landscape Architects as a prerequisite to engaging in all aspects of their occupation, including making connections of landscape irrigation systems to water supplies; and declaring an emergency.

3-3-77 Filed with the Secretary of the Senate
MAR 7 - 1977 Read, referred to Committee on ECONOMIC DEVELOPMENT

Reported favorably.

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by
 { unanimous consent.
 { _____ yeas, _____ nays.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

Read second time and { ordered engrossed.
 { passed to third reading.

Caption ordered amended to conform to body of bill.

Senate and Constitutional 3-Day Rules suspended by vote of
 _____ yeas, _____ nays to place bill on third reading and final passage.

Read third time and passed by { a viva-voce vote.
 { _____ yeas, _____ nays.

OTHER ACTION:

Secretary of the Senate

Engrossed

Sent to HOUSE

ENGROSSING CLERK